

Reeve, 18 C. B. 587, that a contract for the sale of goods is not less within the Statute, because it also embraces something to which the Statute does not extend.

**Delivery and acceptance.**<sup>133</sup>—The word “accepted” imports not merely that there should be a delivery by the seller, but that each party should do something by which the bargain should be bound. “I do not mean, however, to say that if the buyer were to take away the goods without assent of the seller, that would not be sufficient to bind him,” *per* Abbot C. J. in *Tempest v. Fitzgerald*, 3 B. & A. 683. Accordingly, it has been long established, that acceptance and actual receipt are distinct things, and both essential to the validity of the sale, *Franklin v. Long*, 7 G. & J. 407; *Jones v. Mechanics’ Bank*, 29 Md. 287;<sup>134</sup> however, in *Castle v. Swarder*, 6 Hurl. & N. 828, *Cockburn C. J.* thought that the terms acceptance and receipt were equivalent. The acceptance must be with the assent of the vendor, and a countermand of an order of delivery by the vendor, before acceptance by the purchaser, will put an end to the contract, when no subsequent act of the purchaser, or his assignees in bankruptcy, can effect an acceptance so as to change the property in the goods, *Smith v. Hudson*, 6 Best & S. 431.<sup>135</sup> But it may precede the receipt, as where the buyer has inspected and approved the particular goods before purchasing, *Cusack v. Robinson*, 1 Best & S. 299. In *Phillips v. Bistolli*, 2 B. & C. 511, where the purchaser of some jewelry at an auction held it in his hands for three or four minutes, and then handed it back to the auctioneer, saying he had been mistaken in the price, the Court set aside a verdict for the plaintiff, observing that to satisfy the Statute there must be a delivery of the goods by the vendor with an intention of vesting the right of possession in the vendee, and there must be an actual acceptance by the vendee with the intention of taking possession of them as owner.<sup>136</sup> And this doctrine was approved by the Court of Appeals in

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<sup>133</sup> “There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.” Sales Act of 1910, [Code 1911, Art. 83, sec. 25 (3)].

“The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.” *Ibid.* (Code 1911, Art. 83, sec. 69).

“‘Delivery’ means voluntary transfer of possession from one person to another.” *Ibid.* [Code 1911, Art. 83, sec. 97 (1)].

<sup>134</sup> *Hewes v. Jordan*, 39 Md. 472.

<sup>135</sup> But an assignment for creditors by the vendee, or his bankruptcy, does not interfere with the contract, or the right to accept the goods. *McElroy v. Seery*, 61 Md. 389.

<sup>136</sup> In *Fort Worth Co. v. Consumers Co.*, 86 Md. 635, defendant contracted for the purchase of a car-load of beef. He superintended its loading, said he was satisfied with its quality and promised to pay on